



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0501]

RIN 1625-AA00

Safety Zone; National Governors Association, Milwaukee, WI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two safety zones in Milwaukee, Wisconsin for the 2013 National Governors Association summer meeting. The first zone is intended to restrict vessels from a portion of Milwaukee Harbor; the second zone is intended to restrict vessels from a portion of the Menomonee River. These two proposed safety zones are necessary to protect the public and transiting vessels from the hazards associated with the anticipated congregation of spectator, volunteer, and government vessels in these areas. The proposed safety zones are also necessary to protect the public from the hazards associated with a fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0501 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414-747-7148, e-mail Joseph.P.McCollum@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0501), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at, <http://www.regulations.gov> or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

We recommend that you include your name and a mailing address,

an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2013-0501 in the "SEARCH" box and click "SEARCH." Click on the "submit a comment" box, which will then become highlighted in blue. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "SEARCH" box insert "USCG-2013-0501" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West

Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Basis and Purpose

The National Governors Association will hold its 2013 meeting in Milwaukee, WI. This meeting is expected to bring large gatherings of officials, volunteers, and spectators to locations within and around the city of Milwaukee. As part of this event, a fireworks show is planned within Milwaukee

Harbor. The Captain of the Port, Lake Michigan, has determined that the likelihood of transiting watercraft and congestion of vessels in the affected waterways, along with a fireworks display presents significant safety risks. These risks include collisions among spectators and transiting local watercraft as well as falling debris, accidental detonations, and the spread of fire among spectator vessels.

C. Discussion of Proposed Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this proposed rule establishes two safety zones. The first safety zone encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within a rectangle with coordinates beginning at 43°02'22.8"N, 087°53'46.4"W then east to 43°02'22.4"N, 087°53'22.5"W, then southwest to 43°01'59.8"N, 087°53'27.4"W, then west to 43°02'02.1"N, 087°53'50.8"W, then northeast along shore to the point of origin (NAD 83). The second safety zone encompasses all waters and branches of the Menomonee River from the North Plankinton Avenue Bridge in position 43°01'57.4"N, 087°54'44.8"W then west to an imaginary line running north and south along 6th street.

This proposed rule will be effective from August 1, 2013, until August 5, 2013. This safety zone will be enforced between August 1 and August 5, 2013.

The Captain of the Port Lake Michigan will use all appropriate means to notify the public that the zones in this proposal will be enforced, in accordance with 33 CFR 165.7(a). Such means of notice may include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this proposed rule will be relatively small. Also, the safety zones are designed to minimize impact on navigable waters. Furthermore, the safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within the affected areas are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor within a portion of Milwaukee Harbor and/or a portion of the Menomonee River during the times that these zones are enforced.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a limited time on 5 days. These proposed safety zones have been designed to allow traffic to pass safely around the zones whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port. If you think that your business, organization, or

governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414)747-7148. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that this proposed rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not

result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g.,

specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2-1, paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0501 to read as follows:

§ 165.T09-0501 Safety Zone; National Governors Association, Milwaukee, WI.

(a) Location. The following are safety zones:

(1) All waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within a rectangle with coordinates beginning at 43°02'22.8"N, 087°53'46.4"W then east to 43°02'22.4"N, 087°53'22.5"W, then southwest to 43°01'59.8"N, 087°53'27.4"W, then west to 43°02'02.1"N, 087°53'50.8"W, then northeast along shore to the point of origin (NAD 83).

(2) All waters and branches of the Menomonee River from

the North Plankinton Avenue Bridge in position 43°01'57.4"N, 087°54'44.8"W then west to an imaginary line running north and south along 6th street.

(b) Effective Period. This safety zone will be effective and enforced from August 1, 2013, until August 5, 2013. Specific times during which these safety zones will be enforced will be provided by Broadcast Notice to Mariners and/or actual notice from the Captain of the Port's on-scene representative.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port, Lake Michigan to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized

by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Lake Michigan, to act on his or her behalf. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan, or his or her designated on-scene representative to obtain permission to do so.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Lake Michigan, or his or her on-scene representative.

(e) Exemptions. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: June 24, 2013

M.W. SIBLEY
Captain, U. S. Coast Guard
Captain of the Port, Lake Michigan

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